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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/409,330	09/30/1999	JASON T. CASSEZZA	INTL-0268-US	5219
7590 04/06/2005			EXAMINER	
TIMOTHY N TROP TROP PRUNER HU & MILES P C 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024			LUU, SY D	
			ART UNIT	PAPER NUMBER
			2174	
DATE MAILED: 04/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/409,330	Applicant(s) CASSEZZA, JASON T.	
	Examiner Sy D Luu	Art Unit 2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the Amendment filed 10/29/2004. Claims 27-38 are pending in this application. Claims 27, 31 and 35 are independent claims. In the Amendment filed 10/29/2004, claims 1-26 were canceled and claims 27-38 were added. This action is made Final.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.

Claim Rejections - 35 USC § 102

3. Claims 27-38, 30, 31-32, 34, 35-36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (US # 5,191,620).

As per claims 27 and 30, Lee teaches a method of controlling volume levels in a processor-based system comprising: automatically generating a plurality of sounds of progressively changing/increasing volume, receiving a user selection of a desired volume level, and using said user selection to control the volume of sounds generated by said processor-based system (figs. 3A-3A'; col. 2, lines 32-34 and 37-38).

As per claim 28, Lee teaches the step of correlating the time period when a user selection is received to the volume of the sound being generated at the time the user selection was received (fig. 2; *step 19*) and recording that volume level as a preset sound level (fig. 2; *steps 14 and 17*; col. 2, lines 30 et seq.).

Claims 31-32, and 34 are similar in scope to claims 27-28 and 30 respectively, and are therefore rejected under similar rationale.

Claims 35-36 and 38 are similar in scope to claims 27-28 and 30 respectively, and are therefore rejected under similar rationale.

Claim Rejections - 35 USC § 103

4. Claims 29, 33 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US # 5,191,620) in view of Davidson (US # 5,778,077).

As per claim 29, Lee does not expressly teach the step of comparing an audio volume level produced by said system to the preset sound level. This is what Davidson teaches in a method for controlling volume levels in an audio device (col. 4, lines 58-61; col. 5, lines 16-30; *adjusting the volume up/down towards the preset lower/upper limits when the level exceeds the limits*). It would have been obvious to an artisan at the time of the invention to combine Davidson's teaching with Lee's method in order to further enhance Lee's method with a means for automatically adjust the volume within a certain preset range of desired volume.

Claims 33 and 37 are individually similar in scope to claim 29, and are therefore rejected under similar rationale.

Response to Arguments

5. Applicant's arguments with respect to claim 27 have been fully considered but they are not persuasive.

Applicant argues that Lee does not teach the step of claim 27, which includes limitations from former dependent claim 5, since the Board has already found that Lee teaches no such thing.

The Examiner disagrees for the following reasons. On page 5 of the Decision on Appeal by the Board, it was stated that Lee does not disclose the step of obtaining and determination of an indicia of the volume level of the input signal. In the previous office action, the Davidson reference was applied in the rejections of the limitations having to do with the above steps.

It is further noted that the newly added claim 27, which recites the step of “automatically generating a plurality of sounds of increasing volume and receiving a user selection of a desired volume level”, has nothing to do with the reasons for reversal by the Board in regards to the Lee reference. Therefore, the teachings from the Lee reference are deemed to be valid in applying against the newly added claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2174

Inquires

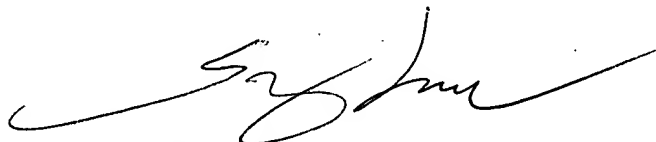
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sy Luu whose telephone number is **(571) 272-4064**. The examiner can normally be reached on Monday - Friday from 7:00 am to 3:30 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (571) 272-4063.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**SY D. LUU
PRIMARY EXAMINER**